

RSA-1441-1992 (O&M)

1635

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-1441-1992 (O&M)
Date of decision : 06.03.2019**

Jatish Chand and another

... Appellants

Versus

Harnarain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate
for the appellants.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are in the present regular second appeal, against the concurrent findings of fact, whereby the suit of the respondents-plaintiffs for permanent injunction as well as mandatory injunction restraining defendant Nos.1 to 3, from raising any construction over the passage and courtyard in dispute as shown in the site plan attached with and from closing or obstructing outlets of the house of plaintiff No.3 and proforma defendant Nos.6 & 7 and from obstructing them from using the street shown in green colour in the site plan, has been decreed in part and affirmed in appeal.

The plaintiffs sought the aforementioned relief on the premise that in between the house of the plaintiffs and the proforma defendants, there is a public street as shown in green colour in the site plan and towards

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western side of the house of plaintiff No.3 and defendant Nos.6 and 7, there was a passage and courtyard (Sehan) in red colour, which was being used by the occupants of all the adjoining house for ingress and out-gress. The outlets, windows and ventilators etc. of the plaintiffs as well as the proforma defendants houses also opened towards the street shown in green colour. Defendant Nos.1 to 3 tried to grab the property in dispute by placing the stones over the same and obtained the decree against M.C. Narnaul. Under the garb of the decree, wanted to raise the construction, in such circumstances, a cause of action accrued to file the suit.

The defendant No.3, 4 and 5 were proceeded *ex parte* and defendant Nos.6 and 7 were filed the written statement admitted the averments of the plaintiffs.

Defendant Nos.1 and 2 opposed the suit and alleged that the passage and courtyard was not used by any person of any adjoining house. It was a space in front of their house and obviously, they were exclusive owners of the same. There were no outlets of the house of the plaintiffs nor the proforma defendant Nos.6 and 7, much less, street. In the proceedings, against the M.C. Narnaul, it was held that it was not a public street and the defendants were owners, therefore, they had no *locus standi*.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the plaintiff Nos.1 and 2 and defendant Nos.4 and 5 are owners in possession of the house as mentioned in para No.1 of the plaint? OPP*
2. *Whether the plaintiff No.3 and defendants No.6 and 7 are owners in possession of the property mentioned in para No.2 of the plaint? OPP*

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- 3. Whether the Rasta, Gali, Sahan as alleged in para No.3 of the plaint are used by the plaintiffs and occupants of adjoining houses as alleged in para No.3 of the plaint, if so, to what effect? OPP*
- 4. Whether the Mories of house of plaintiff No.3 and defendant Nos.6 and 7 also open towards the rasta and Sahan as alleged in para No.4 of the plaint? OPP*
- 5. Whether the Mories, windows, parnals, ventilators etc. of house of the plaintiffs and proforma defendants open towards the rasta and gali as alleged in para No.5 of the plaint? OPP*
- 6. Whether the defendants have caused any nuisance to the plaintiffs if so to what effect? OPP*
- 7. Whether the plaintiffs have no cause of action as alleged? OPD*
- 8. Whether the present suit is not maintainable as alleged? OPD*
- 9. Whether the present suit is barred by principle of res judicata as alleged in para No.3 of the additional pleas of w/s? OPD 1 and 2*
- 10. Whether the plaintiffs are estopped from filing the suit ? OPD 1 and 2.*
- 11. Whether the defendants are entitled to special costs us/ 35-A of CPC? OPD*
- 12. Whether the present suit is bad for non-joinder of necessary parties as alleged in para No.1 of the additional pleas of written statement? OPD*
- 12-A Whether the defendant had disobeyed the order of dated 25.3.1982? if so to what effect? OPD*
- 13. Relief.*

Both the parties led evidence in support of their respective cases.

The trial Court partly decreed the suit of the plaintiffs. So did the lower Appellate Court.

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Mr. Umesh Aggarwal, learned counsel appearing on behalf of the appellants-defendants, in support of the memorandum of appeal, submitted that both the Courts below erred in decreeing the suit as from the evidence both oral and documentary, it has been proved that plaintiff No.1 & 2 and defendant No.4 & 5 were not exclusive owners of the house as mentioned in para of the plaint nor plaintiff No.3 and proforma defendant Nos.6 & 7. As per evidence, the alleged passage and courtyard was not common for being used by the owners of adjoining houses nor it was a thorough fare. In the earlier litigation against the M.C. Narnaul (Ex.DB), it was held that the passage was not a thorough fare.

There is no representation on behalf of the respondents, despite service. The appeal is of the year 1992, accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellants-defendants, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Umesh Aggarwal, for, decree in the earlier litigation (Ex.DB) would not confer the right of ownership over the passage and street as sought to be projected, in the absence of any demarcation report. The plaintiffs were not the party in the aforementioned decree, therefore, it would not have any binding effect. It was obligatory upon the defendants to place on record demarcation report to belie the claim of the plaintiffs that disputed land, subject matter of the injunction, was not common and in private ownership.

In view of what has been noticed above, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No

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ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

06.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**